

Washington Supreme Court tosses out Durkan recall effort

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Seattle Mayor Jenny Durkan addresses a news conference in Seattle in early September. The Washington Supreme Court on Thursday threw out a recall effort that blamed Durkan for the Seattle Police Department's broad use of tear gas on protesters in early June. (Elaine Thompson / The Associated Press) Less



By [David Gutman](#)
Seattle Times staff reporter

A unanimous Washington State Supreme Court tossed out the effort to recall Seattle Mayor Jenny Durkan, ruling that the accusations against her did not rise to the level that would allow a citizen initiative to remove her from office.

The decision kills the push to recall the mayor and means that, barring unforeseen circumstances, voters in 2021 will have the final say on Durkan's job performance, should she choose to run for a second term.

"The allegations in this case are deeply troubling and our review requires that we treat the factual allegations as true," [the court wrote in a brief order](#) signed by Chief Justice Debra Stephens. "Nevertheless, after carefully considering the issues presented, the court concludes that the recall charges presented in this case are factually and legally insufficient."

The court did not give its reasoning, but wrote that a full decision would be released at a later date.

To merit a recall, the court wrote, the charges against Durkan must allege specific, "substantial conduct clearly amounting to misfeasance, malfeasance or violation of the oath of office." The charges against Durkan, the court said, did not meet that bar.

The recall effort, pushed by six Seattle residents, blamed Durkan for the Seattle Police Department's broad use of tear gas in early June, following widespread protests against police brutality and systemic racism.

They blamed Durkan for allowing police to use tear gas and other chemical agents during the coronavirus pandemic and "without concern for the health and well-being of the community."

In a statement Thursday, Durkan said that these are the toughest times Seattle has faced. She did not directly address the court's decision but said she will continue to focus on "the honor of serving as Seattle's mayor."

"Our city deeply needs for all of us to set aside the rancor and come together to address the unprecedented challenges we face, like the COVID-19 pandemic, re-imagining policing, addressing systemic racism and making investments in BIPOC communities, and helping our small businesses and residents struggling in an economic crisis," Durkan said, using the acronym for Black, Indigenous and people of color. "These problems have no easy answers and cannot be solved by slogans."

Grace Harvey, one of the petitioners, said the committee would take the weekend to consider its options. They'll consider, Harvey said, advocating for Durkan's resignation or for the City Council to remove her from office.

"We believe that this was the situation that recall was designed for and clearly it's not and that's disappointing," Harvey said.

A King County Superior Court judge had previously, [twice, allowed the recall effort to go forward](#), albeit with a narrower scope than petitioners originally sought. Another King County judge has allowed a recall effort [against City Councilmember Kshama Sawant to](#)

[proceed](#). The Seattle City Council, citing state law and precedent, authorized the city to fund Sawant's legal defense.

Durkan's office has consistently declined to say how she is paying for her legal defense.

"Now that the case is concluded, the Mayor will discuss options and requirements under city and state law with her lawyers, the Seattle Ethics and Election Commission, the City Attorney's Office, and the PDC," Kelsey Nyland, a Durkan spokesperson, said. "We want to ensure she's complying with all the appropriate disclosure requirements."

[Durkan has argued](#) that it was the chief of police's responsibility, not hers, to determine police tactics, and that the city's longstanding federal consent decree prevents her from making unilateral changes to Police Department policy. The recall petitioners, she says, fail to point out any "law standard, or rule" that she violated, "let alone that she intended to do so."

"There is no evidence that any discretionary decision Mayor Durkan made in the midst of multiple ongoing civil emergencies was manifestly unreasonable," her lawyers [wrote in legal filings](#).

The recall petitioners argued the actions of the Seattle police, in responding to protests, went far beyond a policy dispute, and Durkan had an obligation to change course.

"After it became clear that the SPD was routinely violating the rights of protesters and the rights of those simply residing in Seattle, and after it became abundantly clear that the use of chemical gasses during a respiratory pandemic was unreasonably dangerous, it became incumbent for the Mayor to use her power to intervene," Harvey [wrote in legal filings](#).

David Gutman: 206-464-2926 or dgutman@seattletimes.com; on Twitter: [@davidlgutman](https://twitter.com/davidlgutman).